UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD FIRST REGION

In the Matter of

UGL-UNICCO SERVICE COMPANY

Employer

and

AREA TRADES COUNCIL, a/w
INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 877,
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 103,
NEW ENGLAND JOINT COUNCIL OF
CARPENTERS LOCAL 51, PLUMBERS
AND GASFITTERS UNION (UA) LOCAL
12, AND THE PAINTERS AND ALLIED
TRADES COUNCIL DISTRICT NO. 35

Case 1-RC-22447

Petitioner

and

FIREMEN AND OILERS CHAPTER 3, LOCAL 615, SERVICE EMPLOYEES INTERNATIONAL UNION

Intervenor¹

DECISION AND DIRECTION OF ELECTION²

¹ The names of the Petitioner and the Intervenor were amended at the hearing to reflect their correct names.

The Employer is engaged in business as a maintenance contractor at various locations throughout Massachusetts, including the State Street Bank facilities in Quincy, Boston, Back Bay, Westborough, and Grafton, Massachusetts.

At the hearing, the parties stipulated to the appropriateness of the unit. There are approximately 33 employees in the stipulated unit.

No issues were litigated at the hearing. Rather, the Intervenor contended at the hearing that the Board should reverse current law, overrule the case of *MV Transportation*, 337 NLRB 770 (2002), and reinstate the doctrine of "successor bar" as set forth in the now overruled case of *St. Elizabeth Manor*, 329 NLRB 341 (1999). In support of its position, the Intervenor was permitted to make an offer of proof, which briefly is as follows:

For over 20 years, the Intervenor represented employees employed by Building Technologies, Inc. (BTE) at the locations involved in this case under successive collective bargaining-agreements, the most recent of which was effective from April 23, 2007 to April 19, 2010. By letter dated February 27, 2010, the Employer notified the Intervenor that it was assuming the operations of BTE at these facilities, and that it intended to offer employment to the then-existing members of the bargaining unit. On March 5, 2010, the Employer and the Intervenor executed a Memorandum of Agreement wherein the Employer indicated that it would be commencing operations as a successor to BTE on March 22, 2010, and that it recognized the Intervenor as the representative of the unit employees. The Employer adopted the remainder of the Intervenor's contract with BTE, as modified in that Memorandum of Agreement. Thirty-two of BTE's 33 unit employees were hired by the Employer. There is no evidence that anyone else was hired into a unit position at that time. The Employer and the Intervenor were in the process of negotiating a new collective-bargaining agreement until the instant petition was filed on April 23, 2010.

The Petitioner contends that the Decision in this case must follow *MV Transportation*. The Employer acknowledged that it is a successor to BTE, but took no position on the application of the "successor bar" doctrine.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organizations involved claim to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

² Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

<u>Conclusion</u>: In *MV Transportation*, the Board held that an incumbent union in a successorship situation is entitled to only a rebuttable presumption of continuing majority status, and that status will not serve to bar an otherwise valid decertification, rival union, or employer petition. The Board there concluded that the principle to which it was returning (as initially articulated in *Southern Moldings*, 219 NLRB 119 (1975), represented the most appropriate balance of the Act's competing purposes of protecting employee freedom of choice and maintaining the stability of bargaining relationships.

The Intervenor's request that *MV Transportation* be overruled and that a "successor bar" be found here is denied. Rather, in accordance with existing Board precedent, I shall process the petition.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All electricians, HVAC mechanics, watch engineers, mechanics, assistant plant and facility leads, and all leads and assistant leads employed by the Employer at all State Street Bank facilities in Quincy, Boston, Back Bay, Westborough, and Grafton, Massachusetts, but excluding all other employees including housekeeping employees, clericals, managers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by AREA TRADES COUNCIL, a/w INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 877, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 103, NEW ENGLAND JOINT COUNCIL OF CARPENTERS LOCAL 51, PLUMBERS AND GASFITTERS UNION (UA) LOCAL 12, AND THE PAINTERS AND ALLIED TRADES COUNCIL DISTRICT NO. 35, or by FIREMEN AND OILERS CHAPTER 3, LOCAL 615, SERVICE EMPLOYEES INTERNATIONAL UNION. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election

date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear*, *Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before May 24, 2010. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlrb.gov, by mail, or by facsimile transmission at 617-565-6725. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **four** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

4

³ To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by June 1, 2010. The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov, 4 but may not be filed by facsimile.

DATED: May 17, 2010

/s/ Rosemary Pye

Rosemary Pye, Regional Director First Region National Labor Relations Board Thomas P. O'Neill, Jr. Federal Building 10 Causeway Street, Sixth Floor Boston, MA 02222-1072

_

⁴ To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.